Supreme Court, U.S.
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No. 00-480

IN THE

Supreme Court of the United States

OCTOBER TERM, 2000

AGRIBANK, FCB,
Petitioner,

v.

MARK A. RAMSDEN, et al.,
Respondents

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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Questions Presented

I. Whether a United States District Court has discretion to enjoin relitigation of a federal judgment in state court, when the state court has issued an interlocutory order expressly rejecting the defense of *res judicata?*

II. Whether the principles of *Younger v. Harris*, 401 U.S. 37 (1971), govern the relitigation exception to the Anti-Injunction Act?

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Opinions Below

The District Court's opinion is reported at 63 F. Supp. 2d 958 (W.D. Wis. 1999). The opinion of the Court of Appeals is reported at 214 F.3d 865 (7th Cir. 2000).

Jurisdictional Basis

The Court of Appeals issued its opinion on June 2, 2000. App. 19. On June 16, 2000, AgriBank filed a timely petition for rehearing by the panel and for rehearing en banc. App. 51. On June 30, 2000, the Court of Appeals denied both petitions. App. 51. The instant petition for certiorari is timely, in that AgriBank has filed it within 90 days of June 30, 2000.

This Court has jurisdiction of this petition pursuant to 28 U.S.C. § 1254(1), in that AgriBank seeks review of a final opinion of the United States Court of Appeals for the Seventh Circuit.

Statutes Involved

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

28 U.S.C. § 2283.

Statement Of The Case

In this action, AgriBank sought an injunction to protect a final judgment in its favor issued by the United States District Court for the Western District of Wisconsin. The District Court had jurisdiction to issue this relief pursuant to the All Writs Act, 28 U.S.C. § 1651.

Plaintiffs Mark A. Ramsden, Raelynn Ramsden and Milton R. Ramsden, individually and d/b/a Ramsden Dairy (the Ramsdens) are citizens of Wisconsin. Mark and Raelynn purchased agricultural property from AgriBank. The Ramsdens claimed that the property was contaminated with benzene, and that the contamination injured them and their herd of dairy cattle.

AgriBank is an instrumentality of the United States established by 12 U.S.C. § 2011. Pursuant to 12 U.S.C. § 2258, AgriBank is a citizen of Minnesota, where its principal office is located. AgriBank is part of the Farm Credit System, which is a network of borrower-owned cooperatives created to loan money to farmers and their marketing and supply cooperatives. H.R. Rep. 99-425 (Dec. 6, 1985), reprinted in 1985 *U.S. Code Congressional & Administrative News* 2587, 2591. The purpose of the Farm Credit System is to "facilitate the making of loans upon farm security at low rates of interest." *Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180, 211 (1921). The ultimate owners of AgriBank are the family farmers it serves, who will bear the financial burden of any judgment the Ramsdens obtain.

The Ramsdens initially filed suit in state court in Portage County, Wisconsin (*Ramsden I*). The defendants were AgriBank, Farm Credit Services of North Central Wisconsin ACA (another Farm Credit System entity), and Thomas E. Hass, an employee of AgriBank. The trial court dismissed the complaint as to Mr. Hass. The Ramsdens dismissed without prejudice as to the remaining two defendants and appealed the dismissal of Mr. Hass.

The Ramsdens then sued AgriBank alone in state court in St. Croix County, Wisconsin (*Ramsden II*).

AgriBank removed the action to the United States District Court for the Western District of Wisconsin based on diversity of citizenship. After a substantial amount of expensive discovery, AgriBank moved for summary judgment on the basis that the Ramsdens' expert testimony on causation did not satisfy the requirements of reliability established by *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993). The District Court granted that motion. The Ramsdens appealed, but dismissed the appeal in exchange for AgriBank's waiver of its right to statutory costs. AgriBank spent more than $400,000 defending *Ramsden I* and *Ramsden II*.

Shortly before the summary judgment in *Ramsden II*, the Wisconsin Court of Appeals reversed the dismissal of Mr. Hass in *Ramsden I*, and remanded the case for further proceedings (*Ramsden III*).[1] After the Ramsdens dismissed their appeal in *Ramsden II*, Mr. Hass moved for summary judgment in *Ramsden III* based on the res judicata and collateral estoppel effect of the federal judgment in *Ramsden II*.

The state trial court explicitly acknowledged that all of the elements of claim preclusion were present: identity of parties or their privies; identity of the causes of action; and a final judgment by a court of competent jurisdiction. The state trial court believed that *Daubert's* requirement that expert testimony be reliable was unfair. Since Wisconsin does not require expert testimony to be reliable, the state trial court found that it would be

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[1] The Seventh Circuit's opinion asserts that the Wisconsin Court of Appeals was handed down after the summary judgment in *Ramsden II*. App. 20. This part of the opinion is simply wrong on the facts.

unfair to apply claim preclusion. The state trial court held that issue preclusion did not apply either, because the application of *Daubert* in *Ramsden II* prevented the Ramsdens from having a full and fair opportunity to litigate their case. While that ruling does expressly reject AgriBank's defense, the parties are in agreement that it is not a final judgment for purposes of the Full Faith and Credit Act, 28 U.S.C. § 1738.

AgriBank then filed a motion in *Ramsden II* asking the District Court to enjoin the prosecution of *Ramsden III*. Like the state trial judge, the District Court found that all of the elements of claim preclusion were present. App. 2. Relying on *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394 (1981), the District Court held that a court could not avoid applying claim preclusion merely "because of its own view of the fairness or equity of doing so in a particular case." App. 12. The District Court therefore granted AgriBank's motion for injunctive relief. App. 17-18.

The Court of Appeals reversed. It did not dispute that AgriBank satisfied all of the elements of claim preclusion. It explicitly held that the state court ruling was not a final judgment entitled to preclusive effect, so that the District Court had statutory power to enjoin the action. App. 24-25. The Court of Appeals nonetheless found that the District Court had abused its discretion in entering the injunction. The Court of Appeals adopted "a rule that restricts a federal court's discretion to enjoin state court proceedings once the state court expressly and unambiguously decides a res judicata defense, whether or not there has been a final judgment...." App. 27. This rule rests on the following rationale:

- The principles of *Younger v. Harris*, 401 U.S. 37 (1971), requiring "proper respect for state

functions," govern injunctions under the relitigation exception in § 2283. App. 29.

- If the state court has not decided the res judicata issue, the burden and expense of relitigation may constitute sufficient harm to warrant a federal injunction. App. 29-30.
- If the state court has rejected the res judicata issue in an interlocutory order, such burdens are insufficient to outweigh the "countervailing comity interests" of respect for the state court. In these circumstances, only "the most extraordinary circumstances" warrant a federal injunction. App. 28.
- This approach is necessary to prevent the relitigation exception from becoming "a vehicle for seeking appellate review of a state court decision in federal court." App.28.

The Court of Appeals concluded that its approach "best reconciles the conflicting concerns" identified in *Parsons Steel, Inc. v. First Alabama Bank*, 474 U.S. 518 (1986) (*Parsons II*). App. 27.

Argument

I. The Court Of Appeals' Opinion Directly Conflicts With This Court's Holding in *Parsons II*.

In the *Parsons* cases, plaintiffs sued the Bank in both state and federal court. The federal action was tried first; the District Court set aside a verdict for plaintiffs, and the Court of Appeals affirmed. *Parsons Steel, Inc. v. First Alabama Bank*, 679 F.2d 242 (11th Cir. 1982) (*Parsons I*). The Bank pleaded res judicata and collateral estoppel as affirmative defenses to the pending state court case. The state court "ruled that res judicata did not bar the state action" and proceeded to trial. 474 U.S. at 520.

After losing a jury verdict in state court, the Bank moved the federal court to enjoin plaintiffs from prosecuting the state court action. The District Court granted that motion and the Court of Appeals affirmed. This Court reversed the injunction and remanded for further proceedings. The basis for the reversal was not that the state court had "expressly and unambiguously" decided the res judicata issue. Rather, the basis was that the Full Faith and Credit Act would require federal courts to respect a *final judgment* issued by the state court:

> We believe that the Anti-Injunction Act and the Full Faith and Credit Act can be construed consistently, simply by limiting the relitigation exception of the Anti-Injunction Act to those situations in which the state court has not yet ruled on the merits of the issue. Once the state court has *finally rejected* a claim of res judicata, then the Full Faith and Credit Act becomes applicable and federal courts must turn to state law to determine the *preclusive effect* of the state court's decision.

474 U.S. at 524 (emphasis added).

This Court's disposition of *Parsons II* proves that the sole basis for the holding was that the state judgment, if final, would be entitled to full faith and credit. This Court identified the Court of Appeals' error as "refusing to consider the possible preclusive effect, under Alabama law, of the state-court judgment." 474 U.S. at 525. It held that the District Court was best situated "to determine and apply Alabama preclusion law in the first instance." *Id.* If the judgment were not entitled to preclusive effect, the District Court "would then be in the best position to decide the propriety of a federal court injunction under the general principles of equity, comity, and federalism." 474 U.S. at 526.

That disposition is completely inconsistent with the Court of Appeals' approach to the instant case. In *Parsons II*, there was no question that the state court had "expressly and unambiguously" decided the res judicata issue. If such a ruling "restricts a federal court's discretion" in the fashion described by the Court of Appeals - limiting an injunction to "the most extraordinary circumstances" - *Parsons II* would have told the District Court to deny relief absent the most extraordinary circumstances. Instead, it instructed the District Court to exercise its discretion.

One member of the panel in the Court of Appeals has explicitly acknowledged that the instant decision is directly inconsistent with *Parsons II*. In an article published before her appointment to the bench, Judge Wood discussed the effect of *Parsons II*:

> [I]f the party presents its affirmative defense to the state court and the state court rejects it, then the federal court will be free to issue an injunction as long as the request is presented before the state

> court's judgment is sufficiently final for preclusion purposes under the state's own law of judgments.

Wood, "Fine-Tuning Judicial Federalism: A Proposal For Reform Of The Anti-Injunction Act," 1990 *B.Y.U.L.Rev.* 289, 306 (1990).

II. The Court Of Appeals' Opinion Directly Conflicts With The Holdings Of The Eighth And Eleventh Circuits Applying *Parsons II*.

As the Court of Appeals acknowledged, App. 26, its holding is flatly inconsistent with the disposition of the *Parsons* case on remand. The District Court found that the state court judgment was not final, and the Eleventh Circuit affirmed that finding. *First Alabama Bank v. Parsons Steel, Inc.*, 825 F.2d 1475, 1480-81 (11th Cir. 1987), *cert. denied*, 484 U.S. 1060 (1988) (*Parsons III*). The Eleventh Circuit held that "the *Younger* doctrine is not applicable on the facts of this case," because the state had no interest in the action "beyond 'its interest as an adjudicator of wholly private disputes.'" 825 F.2d at 1482-83, *quoting Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 14 n.12 (1987). Finally, the Eleventh Circuit held that the case "does not involve an improper attempt to seek federal appellate review of a state court decision," because:

> [T]he state court determination . . . was not final at the time the district court issued its injunction in this case. Thus, although Appellees waited until a late point in the state court proceeding to seek an injunction, they did so before the state court had made a final determination with regard to the preclusion issue.

825 F.2d at 1485.

Parsons III and the instant case each occupy the identical procedural posture: the state court has issued an express, unambiguous, non-final - and wrong - ruling denying res judicata effect to a federal judgment. *Parsons III* holds that an injunction to prevent relitigation on these facts is within "the bounds of the district court's discretion." 825 F.2d at 1486. The instant opinion "regard[s] this as an abuse of discretion." App. 30.

The rationales of *Parsons III* and the instant case are just as irreconcilable as the results. *Parsons III* says that *Younger* does not apply to a private dispute in which the state's only role is as an adjudicator; the instant opinion says that *Younger* is controlling. *Parsons III* holds that the injunction is not an improper attempt to obtain federal appellate review of a state decision; the instant opinion says exactly the opposite.

The Court of Appeals' opinion in the instant case is also directly contrary to the Eighth Circuit's opinion in *In re SDDS, Inc.*, 97 F.3d 1030 (8th Cir. 1996). SDDS attempted to open a solid waste landfill. When SDDS obtained the necessary permits, the landfill's opponents persuaded the voters to veto the project in a statewide referendum. SDDS challenged the referendum in federal court. SDDS successfully argued that it had a federally protected property right in the permits and that the referendum was the proximate cause of SDDS' inability to open the landfill.

After prevailing in federal court, SDDS sued South Dakota in state court for damages for taking SDDS' property. The state trial court granted summary judgment to the State, finding that SDDS' interest did not rise to the level of a protectable property interest and that the referendum was not the proximate cause of the

failure to open the landfill. SDDS appealed that judgment to the South Dakota Supreme Court. It also sought an injunction in federal court against the State's efforts to relitigate these issues. The District Court denied relief, but the Eighth Circuit Court reversed:

> [T]he district court abused its discretion in denying injunctive relief. Requiring SDDS to relitigate in the state court issues previously decided by this Court constitutes an irreparable harm. . . . While issuing the injunction in this case will foreclose the opportunity for the Defendants to relitigate issues in the state court, we do not believe that this is a legitimate harm which must be balanced. As noted above, the Defendants had one full and fair opportunity to litigate these issues in the federal forum, and the rules of equity do not require that they be given a second bite at the apple in the state forum in order to obtain a more favorable result.

97 F.3d at 1041.

In the Seventh Circuit, it is an abuse of discretion for a District Court to enjoin relitigation once the state court has expressly ruled on the res judicata issue. In the Eighth Circuit, it is an abuse of discretion not to issue such an injunction. A clearer conflict would be hard to imagine.

Cases from other circuits do not present the conflict so starkly, but most of them take a fundamentally different approach than that of the Seventh Circuit. In *Nakash v. Marciano*, 882 F.2d 1411 (9th Cir. 1989), the Ninth Circuit refused an injunction because - and only because - the state court ruling on res judicata was final. 882 F.2d at 1414. In *American Town Center v. Hall 83 Associates*, 912 F.2d 104 (6th Cir. 1990), the Sixth Circuit refused the

injunction, but explicitly rejected *Parsons II* as a basis for doing so; the state court's "denial of summary judgment was not a final decision." 912 F.2d at 111-12 n. 1. In *Amalgamated Sugar Co. v. NL Industries, Inc.*, 825 F.2d 634 (2d Cir.), *cert denied*, 484 U.S. 992 (1987), the Second Circuit stated in dictum that Amalgamated "acted properly" in seeking a ruling in state court first and then moving for injunctive relief in federal court. 825 F.2d at 642. *Contra, Kaempfer v. Brown*, 684 F. Supp. 319, 323 (D. D.C. 1988), *aff'd*, 872 F.2d 496 (D.C. Cir. 1989) (*Parsons II* bars an injunction "when a state court has *expressly* rejected the claim of *res judicata*") (emphasis original).

There is no realistic prospect that these circuit conflicts will resolve themselves without this Court's intervention. The Court of Appeals' opinion in the instant case acknowledged the Eleventh Circuit's holding in *Parsons III*, but chose instead to follow *Kaempfer*. App. 26. AgriBank's petition for rehearing en banc made the circuit conflict absolutely clear, but not a single member of the Seventh Circuit voted to grant rehearing. In both the Eighth and Eleventh Circuits, a panel cannot overrule a prior panel. *United States v. Reynolds*, 116 F.3d 328, 328 (8th Cir. 1997); *Wascura v. Carver*, 169 F.3d 683, 687 (11th Cir. 1999).

Moreover, as explained further in Point III, this conflict lies at the heart of important federalism issues. Suppose the Seventh Circuit has the rule right. At present, the only states whose courts will receive the proper degree of deference are the three states in the Seventh Circuit and the "state" courts of the District of Columbia. The ten states in the Eighth and Eleventh Circuits will not receive proper deference; the 13 states in the Sixth and Ninth Circuits probably will not; and

the outcome in the other states is unclear. Circuit conflicts about federalism issues deserve immediate review.

III. The Deference Due To A Non-Final State Court Ruling On The *Res Judicata* Effect Of A Federal Judgment Raises Important Federalism Issues.

The dual system of federal and state courts inherently creates tensions between the two systems. The Anti-Injunction Act "represents Congress' considered judgment as to how to balance" those tensions. *Chick Kam Koo v. Exxon Corp.*, 486 U.S. 140, 146 (1988). In general, a federal court should refrain from intervening in state court cases, out of respect for the "fundamental constitutional independence of the States." *Id.* The exceptions to that rule, while narrowly construed, are nonetheless essential "to ensure the effectiveness and supremacy of federal law." *Id.*

The relitigation exception rests on the doctrines of *res judicata* and collateral estoppel. *Id.* at 147. Congress has made it clear that the principle of finality embodied in those doctrines overrides the comity concerns that animate the general rule. In *Toucey v. New York Life Ins. Co.*, 314 U.S. 118 (1941), this Court held that an earlier version of § 2283 did not permit federal courts to enjoin parties from relitigating federal judgments in state court. Congress promptly amended the statute to overrule *Toucey*.

Had AgriBank immediately sought relief in the District Court, instead of raising the issue as an affirmative defense in state court, the District Court would unquestionably have had discretion to issue the injunction. The 1948 amendment to § 2283 establishes that the interest

in finality trumps whatever insult that injunction may convey to the state court.

According to the Court of Appeals, however, the balance tips differently after the state court has expressly, albeit erroneously, declined to afford the federal judgment the finality it is due. In this view, "the affront of federal court intervention stripping the state court of power to continue is greatly magnified." App. 28. That conclusion is neither intuitively obvious nor universally recognized.

As the Court of Appeals recognized, App. 28, its holding creates a strong incentive to "rush back to federal court for an injunction rather than relying on the *res judicata* defense in state court." At best, the state court "will be unfamiliar with the record," and less able than the federal court to determine what has been resolved. *Toucey*, *supra*, 314 U.S. at 144 (Reed, J., dissenting). At worst, the state court will ignore the federal judgment because it disagrees with controlling federal law, as happened here. Any future defendant with a federal judgment based on *Daubert* would be foolish to submit that judgment to the tender mercies of a Wisconsin state judge.

The Court of Appeals' ruling therefore creates a strong incentive for parties to act in all cases on the assumption that state courts cannot be trusted to understand or follow federal law. AgriBank believes that assumption is considerably more insulting to state courts than a federal injunction against further proceedings in the hopefully rare cases in which state courts do get it wrong. In the context of habeas corpus, comity dictates that the prisoner must give "an opportunity to the state courts to correct a constitutional violation"; immediate resort to

federal courts would be "unseemly." *Rose v. Lundy*, 455 U.S. 509, 518 (1982) (citations and internal punctuation omitted). The same principle is equally applicable to the Anti-Injunction Act.

In its dictum in *Amalgamated Sugar*, the Second Circuit endorsed this argument:

> Amalgamated acted properly in moving for summary judgment on res judicata grounds in the New Jersey court prior to seeking injunctive relief in the district court, thereby attempting to avoid invoking the more intrusive remedy of injunctive relief.

825 F.2d at 642.

The Court of Appeals' reliance on *Younger* also raises significant issues both of separation of powers and of federalism. While the relitigation exception is narrowly construed, Congress has decided that - when applicable - it overrides concerns for comity. The judge-made *Younger* doctrine permits federal courts to defer to the states only in "exceptional circumstances." *New Orleans Public Service, Inc. v. Council of City of New Orleans*, 491 U.S. 350, 368 (1989). Surely those circumstances cannot include situations in which Congress has explicitly authorized the federal courts to act.

The Court of Appeals is correct that this Court has sometimes applied *Younger* in civil cases. It has done so only when "the State's interests in the proceeding are so important that the exercise of the federal judicial power would disregard the comity between the States and the National Government." *Pennzoil, supra*, 481 U.S. at 11. In the instant case, the State is merely acting as an "adjudicator of wholly private disputes," *id.* at 14 n.12, so its true interest is in assuring that the case is correctly

resolved in accordance with the rule of law. The state court's refusal to apply claim preclusion to a valid federal judgment because it thought *Daubert* was "unfair" is the antithesis of the state's true interest.

Finally, comity is a two-way street. The courts of sovereign states in a federal system are entitled to respect, but they have a corresponding duty to apply controlling federal law "[r]egardless of personal discomfort" with it. *T.L.J. v. Webster*, 792 F.2d 734, 739 n.4 (8th Cir. 1986) (Arnold, J.). The relitigation exception "recognizes that the states, as well as the federal government, have a responsibility to maintain the harmony we cherish." *Southwest Airlines Co. v. Texas Int'l Airlines*, 546 F.2d 84, 91 (5th Cir.), *cert. denied*, 434 U.S. 832 (1977) (Wisdom, J.):

> [N]othing would be as productive of friction between the state and federal courts as to permit a state court to interpret and perhaps to upset such a judgment of a federal court.
>
> Friction is also avoided by a judgment that:
>
> prevents multiple litigation of the same cause of action and . . . . assures the winner in a federal court that he will not be deprived of the fruits of his victory by a later contrary state judgment which the Supreme Court may or may not decide to review.

Id.

The Court of Appeals in the instant case has entirely ignored the federal concern that state courts respect final federal judgments. In refusing to apply claim preclusion because it thought *Daubert* was "unfair," the state court demonstrated no respect for the federal courts. It is hardly in a position to complain that the federal

courts are displaying no respect for its lawless action.

Conclusion

For these reasons, AgriBank respectfully prays that the Court grant the petition for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit.

Respectfully Submitted,

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APPENDIX

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

98-C-0221-C

MARK A. RAMSDEN and RAELYNN RAMSDEN,
husband and wife, individually
and d/b/a Ramsden Dairy,

-and-

MILTON R. RAMSDEN, individually
and d/b/a Ramsden Dairy,
Plaintiffs,

v.

AGRIBANK, FCB,
Defendant.

OPINION AND ORDER

Judgment was entered for defendant AgriBank, FCB in this civil action in February 1999. The case is before the court now on defendant's motion for preliminary and permanent injunctive relief to protect the Court's judgment. Defendant is asking this court to enjoin the Circuit Court for Portage County, Wisconsin, from conducting any further proceedings brought by plaintiffs against defendant AgriBank or its agent, Thomas Hass, and to enjoin plaintiffs from prosecuting or initiating any additional proceedings against defendant AgriBank or any of its present or former officials, directors, employees or agents on claims arising out of the transaction that gave rise to this case. Defendant contends that the state court suit is barred by the principles of claim and issue preclusion because plaintiffs are making the same claims in state court on which they lost in this court.

Jurisdiction is present. This court had jurisdiction over the original action. This proceeding has the effect of "a supplemental and ancillary bill in equity" to "effectuate the adjudication" made by this court; it is brought to "preserve the fruits and advantages of a judgment." *Local Loan Co. v. Hunt,* 292 U.S. 234, 239 (1934).

Ordinarily, federal courts are prohibited by the Anti-Injunction Act, 28 U.S.C. § 2283, from enjoining the proceedings of a state court. The act has three specific exceptions, which are to be interpreted narrowly because of the sensitive nature of federal courts' interfering with state court proceedings. The exception relevant to this case provides an exemption from the act's prohibitions when necessary "to protect or effectuate [a court's] judgments." *Id.* This is the unusual situation in which that exception is applicable. Defendant AgriBank has established that all of the elements of claim preclusion are present and that it is entitled to permanent injunctive relief. The state court has refused to accept the preclusive effect of the federal court judgment. Accordingly, I will grant defendant's motion.

For the purpose of deciding the motion, I find that the following facts are undisputed.

FACTS

Plaintiffs in this action, Mark A. Ramsden, Raelynn Ramsden and Milton R. Ramsden, brought suit against Farm Credit Services of North Central Wisconsin ACA, AgriBank, FCB, and Thomas E. Hass in the Circuit Court for Portage County, Wisconsin in February 1997, alleging tortious conduct in the sale of certain agricultural property known as the Hartjes farm. The state court dismissed the action against Hass, whereupon plaintiffs dismissed the complaint against the remain-

ing defendants without prejudice and appealed Hass's dismissal to the state court of appeals.

While the appeal was pending, plaintiffs brought a second action against defendant AgriBank in the Circuit Court for St. Croix County, Wisconsin, alleging misrepresentation in the sale of the Hartjes farm, among other tortious acts. AgriBank removed the case to the United States District Court for the Western District of Wisconsin, alleging complete diversity of citizenship and an amount at issue of more than $75,000.

In federal court, plaintiffs filed an amended complaint and a second amended complaint, alleging that they and their cattle were poisoned by benzene contamination present in the water of the farm sold to them by defendant AgriBank. After conducting voluminous discovery, including 35 depositions, defendant moved for summary judgment, contending that plaintiffs did not have evidence sufficient to show that any benzene contamination in the well water or surrounding soil was a cause of plaintiffs' alleged health problems or the deaths of their cattle.

In deciding defendant's motion, I found the following facts to be undisputed. Defendant acquired title to the farm in 1990 and spent several years trying to sell the property. In 1995, defendant had an underground storage tank removed from the farm and learned that the soil in the area was contaminated with gasoline and required remediation. Defendant's employee, Thomas Hass, hired a company known as Cedar Corporation to do the remediation work; Cedar Corporation tested the well water on the property and reported orally to Hass that it had found no contamination. In February 1996, defendant sold the property at auction to plaintiff Mark

Ramsden. Hass conducted the auction. He announced that the sale was "as is," that defendant AgriBank would be responsible for cleanup of any contamination related to the storage tank, that the well water had recently been tested and no contamination had been detected, that the water was safe for human consumption and that the well had previously supported a herd of 160 dairy cattle. After the sale, Hass received Cedar Corporation's written report confirming that no contamination had been detected. Before closing on the property, plaintiffs had their own well waster test run. The results were negative and mark Ramsden received a license to operate a dairy. Plaintiffs Mark and Raelynn Ramsden lived on the farm less than six months. Plaintiff Milton Ramsden never lived there.

In responding to defendant's motion for summary judgment, plaintiffs had to show that they had sufficient evidence of causation to raise a jury question. For that purpose, plaintiffs relied on the testimony of William Croft, a veterinarian. Croft was prepared to testify as to levels of contamination, although he did not purport to have any training or experience in soil science generally or in the detection of contaminants in particular. He was prepared also to testify about the results of bovine urinalyses he performed on plaintiffs to determine the level of benzene to which they had been exposed, although he did not offer any evidence that bovine urinalyses are accurate or helpful in assessing human exposure to contaminants. Finally, he intended to testify that a previous occupant of the farm had contracted a fatal form of cancer in 1998 from his exposure to benzene from the storage tank on the property when he had lived there twenty-five years earlier, although Croft had no evidence that the property had been contaminated in 1973,

when the previous occupant had lived there; he had never examined the deceased or reviewed his medical history; and he had never interviewed the deceased's family.

Applying *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993), to Croft's proposed testimony, I concluded that the testimony lacked scientific reliability and validity and therefore was not admissible as evidence. With this testimony eliminated, plaintiffs were left with no way of proving through expert testimony that the benzene level recorded on the farm had ever exceeded 57 parts per billion and no evidence that benzene levels of 57 ppb or lower could have produced the negative effects plaintiffs alleged they and their cattle had suffered in the six months plaintiffs Mark and Raelynn Ramsden and their cattle lived on the farm. Because Wisconsin law requires expert testimony to establish causation when toxic exposures are involved, I granted defendant's motion for summary judgment. The trial scheduled to begin on February 16, 1999, was canceled and judgment was entered for defendant on all of plaintiffs' claims. Plaintiffs appealed the judgment to the Court of Appeals for the Seventh Circuit but dismissed the appeal voluntarily in exchange for a waiver by defendant of recovery of its costs.

While plaintiffs' appeal was pending, the Wisconsin Court of Appeals reversed the trial court's dismissal of Hass from the state court action and remanded the case to the trial court, where it is being pursued by plaintiffs. All of plaintiffs' allegations against Hass in that suit concern actions taken by Hass in the scope of his employment with defendant AgriBank and all of the allegations were the subject of this federal court action against defendant AgriBank.

In March 1999, Hass moved for summary judgment in the Portage County court, arguing claim and issue preclusion, among other grounds. The motion was denied in July 1999. The state court found that the elements were present for claim preclusion: there was complete identity between the parties or their privies in both suits; the misrepresentation claims against Hass in the state court action were identical to those made against AgriBank in the federal action and all of the claims arose out of the same transaction; and this court's decision was a final decision by a court of competent jurisdiction. However, the court found that considerations of equity and fairness barred application of claim preclusion to the state court action. In its view, the law of claim preclusion was designed to draw a line between claims that are meritorious and those that are vexatious, repetitious and needless. *See Ramsden v. Hass*, 97 CV 30, slip op. at 4 (Portage Co. Cir. Ct. July 23, 1999) (citing *Northern States Power Company v. Bugher*, 189 Wis. 2d 541,549, 525 N.W.2d 723, 727 (1995)). The court found that under Wisconsin law, plaintiffs' expert would have been allowed to testify because he would not have been subjected to the *Daubert* requirements that an expert be qualified to give his opinions and that he follow scientific methods in reaching his conclusion. *See id.* at 5-6. Because of the significant differences the court found between Wisconsin evidentiary rules and those of the federal courts, because defendant AgriBank had removed the case to federal court and because the court could not find that plaintiffs were engaged in vexatious, repetitious and needless litigation, the state court concluded that it would be unfair to apply claim preclusion to bar plaintiffs' state court suit. *Id.* at 6.

The circuit court held also that the doctrine of issue preclusion did not bar relitigation of the plaintiffs' claims

in state court. It concluded that because Wisconsin state courts and Wisconsin federal courts have different "bundles of legal principles" they apply to determine the admissibility of expert testimony, the doctrine of issue preclusion could not apply. This means that there is no bar to trying the same issues again. In the state court's opinion, federal court proceeding "*did not provide an adequate opportunity for a full and fair adjudication of the underlying issue in this case.*" (Emphasis in original).

In defending the federal action, defendant incurred fees and costs of more than $400,000.

OPINION

A. Availability of Injunction against Relitigation

In a system as ripe for friction as the complex system of dual state and federal courts, the Anti-Injunction Act, 28 U.S.C. § 2283, serves an important purpose. It prohibits a federal court from enjoining ongoing proceedings in state court, with only three exceptions: 1) where an injunction is authorized expressly by federal statute; or 2) where it is necessary in aid of the federal court's jurisdiction; or 3) where it is required in order to protect or effectuate the court's judgment. The act reflects Congress's general policy that "state proceedings 'should normally be allowed to continue unimpaired by intervention of the lower federal courts, with relief from error, if any, through the state appellate courts and ultimately [the Supreme] Court'" *Chick Kam Choo v. Exxon Corp.*, 468 U.S. 140, 146 (1988). The act is effective; it is a rare event when a federal court is asked to intervene to stop a state court proceeding. It is even more rare when the federal court accepts the invitation.

As cautious as courts may be about reaching out to enjoin a state court from proceeding with litigation, there are circumstances that require such action. One such circumstance is the specter of parties relitigating in state court the same matters that have been decided by the federal court. *See* 17 Charles A. Wright et al., *Federal Practice and Procedure* § 4226 (2d ed. 1988) ("The courts have clearly understood that the third exception [to the Anti-Injunction Act] does allow injunctions to prevent relitigation."). *See also Midkiff v. Tom*, 725 F.2d 502 (9th Cir. 1984) (holding that issuance of injunction was necessary to protect federal court judgment when Hawaiian state courts refused to grant it preclusive effect); *In re Corrugated Container Antitrust Litigation,* 659 F.2d 1332, 1334-35 (5th Cir. Unit A 1981) (upholding injunction forbidding certain plaintiffs in federal class action suit from pursuing litigation in state court in South Carolina and rejecting as frivolous plaintiffs' contention that denying them opportunity to sue for damages under more favorable South Carolina law deprived them of property without due process of law); *Harper Plastics, Inc. v. Amoco Chemicals Corp.*, 657 F.2d 939, 946-47 (7th Cir. 1981) (holding that third exception to Anti-Injunction Act permits federal courts to enjoin state court relitigation of matters finally adjudicated in federal court, including matters that were not raised but could have been raised in federal proceeding); *Samuel C. Ennis & Co., Inc. v. Woodmar Realty Co.*, 542 F.2d 45,48 (7th Cir. 1976) (reversing district court's denial of injunction to restrain parties to closed bankruptcy proceeding from pursuing damage suit in state court in Indiana against trustee in bankruptcy and various other participants in bankruptcy proceeding; "alternative to allowing such injunctions 'is that a federal judgment entered perhaps after years of expense in money and energy . . . comes to

nothing that is final. It is to be only the basis for a plea of res judicata which is to examined by another court, unfamiliar with the record already made, to determine whether the issues were or were not settled in the former adjudication'") (quoting *Toucey v. New York Life Ins. Co.*, 314 U.S. 118, 144 (1941) (Reed, J., dissenting)).

I conclude that § 2283 permits the issuance of an injunction if defendant AgriBank can prove that it has established all the elements of claim or issue preclusion or both. I turn then to that question.

B. Elements of Claim Preclusion

Technically, the question of preclusion is governed by federal rules, because the first judgment was entered in federal court. *See Equal Employment Opportunity Comm'n v. Harris Chernin, Inc.*, 10 F.3d 1286, 1289 (7th Cir. 1993) (federal rules of claim preclusion apply when first suit is brought in federal court). In this case, however, it does not matter whether federal law or Wisconsin law applies. In either jurisdiction, the elements of claim preclusion are: 1) a final judgment on the merits in an earlier action; 2) identity of the cause of action in the earlier and the later suits; and 3) identity of the parties or privies in the two suits. *See id.; Northern States Power Co.*, 189 Wis. 2d at 551,525 N.W.2d at 728.

I. Final judgment

Plaintiffs make a weak attempt to contest the fact that a final judgment on the merits was entered by this court. They argue that the judgment does not bar them from proceeding because it did not recite the words, "with prejudice." Not surprisingly, they do not cite any support for this argument. Whether the final judgment said "with prejudice" is irrelevant. The critical determinants

are that all of the claims and issues raised were resolved and judgment was entered for defendant. *See Prakash v. American Univ.*, 727 F.2d 1174, 1181-82 (D.C. Cir. 1984) (summary judgment is ruling on merits of case; as decision on merits, it bars action for claim preclusion purposes); *O'Neill v. Dell Publishing Co.*, 630 F.2d 685, 690 (1st Cir. 1980) (with grant of summary judgment in their favor, defendants can raise issue preclusion as bar to plaintiffs claims against them); *Hoke v. Retail Credit Corp.*, 521 F.2d 1079, 1081 n.3 (4th Cir. 1975) (summary judgment ruling was adjudication on merits); *Tule v. Heyd*, 482 F.2d 590, 594 n.2 (5th Cir. 1973) ("Of course, a summary judgment is always 'with prejudice.'"); 18 Wright et al., *Federal Practice and Procedure* § 4444 (2d ed. 1981).

2. Identity of causes of action

The causes of action in this case are identical to those raised in the pending state court proceeding. In both cases, plaintiffs alleged that defendant AgriBank, through its agent. Thomas Hass, misrepresented the condition of the farm defendant sold to plaintiffs, intentionally inflicted emotional distress upon plaintiffs and was negligent in failing to ascertain the truth about the condition of the property and that as a result, plaintiffs and their cattle were injured. The alleged facts are the same that plaintiffs alleged in this court. The transaction is the same: the allegedly improper sale of a contaminated property.

Plaintiffs do not deny that the causes of action are the same, but they argue without explanation that because this court excluded Croft's testimony, they are not relitigating the same claims against Hass. Plts.' Br. in Opp., dkt. #185, at 16. In assessing whether claims are

identical for the purpose of applying claim preclusion, a court looks closely at the claims asserted in the two proceedings. *See, e.g. Samuel C. Ennis & Co.*, 542 F.2d at 47-48 (finding that same allegations of fraud asserted in state court proceeding had been ruled upon years earlier in bankruptcy proceeding); *cf. Bluefield Community Hosp., Inc. v. Anziulewicz*, 737 F.2d 405 (4th Cir. 1984) (denying request for injunction to prevent state court litigation after analyzing rights asserted in second case and finding them distinct from those asserted in earlier case). If the claims are the same, as they are in these two cases, then there is an identity of claims for claim preclusion purposes. *See Northern States Power Co.*, 189 Wis. 2d at 553-55, 525 N.W.2d at 728-29 (Wisconsin uses transactional approach derived from *Restatement (Second) of Judgments* § 24 (1982) to decide whether two suits involve same cause of action; doing so requires pragmatic determination of what factual grouping constitutes "transaction," looking to "'such considerations as whether facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage'"). Whether the party asserting the claim was allowed to introduce specific evidence in support of that claim is an entirely different question, unrelated to deciding whether the same basic legal and factual matters were at issue in both cases.

3. Identity of parties

The final element of claim preclusion is established by the fact that the parties to both suits are identical. Plaintiffs are the same and Hass is in privity with defendant AgriBank, his employer and principal. *See Great Lakes Trucking Co., Inc. v. Black*, 165 Wis. 2d 162,

170, 477 N.W.2d 65, 68 (Ct. App. 1991) (holding that licensed agent is in privity with principal for purpose of establishing identity of parties; record establishes "classic employer-employee relationship in which [corporation] is vicariously liable for conduct of [agent]"). Plaintiffs do not deny that Hass and defendant AgriBank, his employer, are the same party for claim preclusion purposes.

4. Equitable considerations

By its nature, claim preclusion is an equitable doctrine, designed to promote fairness to the victor, judicial efficiency and conservation of public and private resources. *See Northern States Power*, 189 Wis. 2d at 549,525 N.W.2d at 727. "[T]he doctrine of claim preclusion provides an effective and useful means to 'relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication.'" *Id.* at 559, 525 N.W.2d at 731 (quoting *Allen v McCurry*, 449 U.S. 90, 94 (1980)). It does not follow, however, that a court may avoid application of the principle because of its own view of the fairness or equity of doing so in a particular case. "A final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action," *Federated Department Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981), even if the judgment was wrong or if it rested on a legal principle subsequently overruled. An erroneous judgment can be corrected only by direct review. *See id.* In *Moitie*, the Supreme Court reversed the court of appeals' refusal to apply the principles of claim preclusion in a situation in which seven parties had filed price-fixing class actions that were dismissed on a ground later held to be legally incorrect. The plain-

tiffs had appealed in five of the cases; the plaintiffs in the remaining two had chosen to file in state court, where the cases were removed by the defendants to federal court. The court of appeals believed that the new legal interpretation should apply to all seven cases: the principles of claim preclusion should give way to "public policy" and "simple justice" when the position of the non-appealing parties was so closely interwoven with those of the appealing parties. In reversing the appellate court, the Supreme Court said that it "did not see the grave injustice which would be done by the application of accepted principles of res judicata." To the contrary, "'[s]imple justice'" is achieved when a complex body of law developed over a period of years is evenhandedly applied." *Id.* at 401. Reliance on "public policy" was similarly misplaced: "'[p]ublic policy dictates that there be an end of litigation.'" *Id.* (quoting *Baldwin v. Traveling Men's Ass'n*, 283 U.S. 522, 525 (1931)). *See also Supporters to Oppose Pollution v. Heritage Group,* 973 F.2d 1320, 1325 (7th Cir. 1992) ("*Moitie* scotches equitable arguments" against application of principles of preclusion in any particular situation).

Just as fairness and equity are no reason not to apply claim preclusion, a party seeking its application need not show that the particular circumstances are abusive or vexatious. *See First Alabama Bank of Montgomery v. Parsons Steel Co.*, 825 F.2d 1475, 1482 (11th Cir. 1987) (holding that showing of bad faith prosecution or harassment not required for issuance of injunction to prohibit relitigation). It is the mere fact of relitigation that is considered vexatious and harassing, not the motives of the litigant or the merits of the particular litigation.

Defendant AgriBank has shown all of the elements required for application of the doctrine of claim preclu-

sion. Therefore, it is not necessary to consider whether defendant could also establish the elements of issue preclusion.

C. Defendants Entitlement to an Injunction

As the party moving for an injunction, defendant must show its entitlement to such relief. The courts are not in precise agreement about the nature of the showing that must be made. *See, e.g., In re SDDS, Inc.,* 97 F.3d 1030, 1041. (8th Cir. 1996) (applying familiar four-part test to request for injunction); *Daewoo Electronics Corp. v. Western Auto Supply Co.,* 945 F.2d 474, 478 (8th Cir. 1992) (movant must show that it would suffer irreparable harm if injunctive relief not granted); *First Alabama Bank,* 825 F.2d at 1484 (movant must make "'strong and unequivocal showing of relitigation'") (quoting *Delta Air Lines, Inc. v. McCoy Restaurants, Inc.*, 708 F.2d 582, 585-86 (11th Cir. 1983)). *See also* 18 Wright et al., *Federal Practice and Procedure*, § 4405, p. 40 ("[I]njunction must satisfy the general equitable requirement that the 'legal' remedy by defensive assertion of res judicata be found inadequate."). The distinctions among the courts and commentators are of no moment. Defendant has demonstrated that it can meet any of the suggested standards. It has shown that it is entitled to relief; it will suffer irreparable harm if an injunction does not issue and it has no adequate remedy at law; it will suffer more harm if an injunction does not issue than plaintiffs will suffer if one does issue and the public interest will be advanced by the issuance of an injunction.

Plaintiffs argue that defendant cannot show irreparable harm because it faces nothing worse than another round of litigation. Citing *Younger v. Harris,* 401 U.S. 37, 46 (1971), plaintiffs say that "the cost, anxiety, and

inconvenience" of having to defend a lawsuit are not generally considered sufficient to show irreparable injury. *Younger* involved a state criminal proceeding; this case involves a dispute between private parties in which the state has no interest in the outcome. The distinction is important. The standard for an injunction set out in *Younger* is that "even immediate injury is insufficient unless it is 'both great and immediate.' *Id.* (citations omitted). However, considerations of comity do not require application of the higher *Younger* standard for irreparable injury when a purely private lawsuit is concerned. *See First Alabama Bank,* 825 F.2d at 1482-83 (*Younger* principles not applicable in suit in which important state interests not involved).

The obvious prospect of relitigation suffices to show that defendant will suffer irreparable harm if an injunction does not issue to stop the state court proceeding. The balance of harms is dearly in defendant's favor. The loss of the opportunity to relitigate in state court is not a legitimate harm that should be weighed against defendant's injury. *In re SDDS, Inc.*, 97 F.3d at 1041.

The public's interest in finality of litigation and repose for litigants will be served by the issuance of an injunction. *See Daewoo Electronics Corp.,* 975 F.2d at 478-79 ("Rather than interfere with [state's] interests, [an] injunction will promote judicial economy and protection of parties from harassing, duplicative litigation, interests which the federal and state courts share."). Finally, defendant has shown that it does not have a legal remedy in state court the state court has held that the case must be relitigated. Accordingly, I conclude that the injunction should issue.

D. Additional Issues

There remains a minor question about the status of the state court proceedings. In *Parsons Steel, Inc. v. First Alabama Bank of Montgomery,* 474 U.S. 518 (1986), the Supreme Court held that if a state court has finally rejected an assertion of claim preclusion, the Full Faith and Credit Act becomes applicable and a federal court must turn to state law to determine the preclusive effect of the state court's decision. In this case, neither side has argued that the state court's denial of defendant's motion for summary judgment is a final judgment or that it would otherwise be viewed as having preclusive effect in the state courts of Wisconsin. I have found no case law that would suggest it would have such effect.

The parties have argued at some length in their briefs whether plaintiffs had any option but to remain in federal court once defendant removed the case from the Circuit Court for St. Croix County. The point is irrelevant. The applicability of the doctrine of claim preclusion does not hinge on the parties' forum preferences. *See Chicago, R. I. & P. Ry. v. Schendel,* 270 U.S. 611, 615 (1926) (It is elementary, of course, that, in any judicial proceeding, the arrangement of the parties on the record, so long as they are adverse, or the fact that the party against whom the estoppel is pleaded was an objecting party, is of no consequence.") If it were otherwise, there would be no such thing as a final preclusive judgment in a removed case.

It is equally immaterial that this case was initiated after the original action was begun in Portage County. It is the first judgment entered that has preclusive effect, not the judgment in the first filed suit. *See Schendel*, 270 U.S. at 616-17 ("irrespective of which action or proceed-

ing was first brought, it is the first final judgment rendered in one of the courts which becomes conclusive in the other as *res judicata*."); *Carr v. Cigna Securities, Inc.*, 95 F.3d 544, 546 (7th Cir. 1996).

Plaintiffs have not argued either in opposition to this motion or to defendant's motion for summary judgment that their substantive rights were infringed by this court's application of the principles of *Daubert*. A hint of such an argument can be found in the state trial court's decision, in which the court seems to say that the application of federal evidentiary rules in this diversity case violated plaintiffs' substantive rights because the use of the rules was outcome-determinative. *See Guaranty Trust Co. of New York v. York*, 326 U.S. 99 (1945) (reformulating rule of *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938), requiring application of state rules of decision to all nonfederal matters; new test was that applicability of state law turned on whether "it significantly affected the result of a litigation for a federal court to disregard a law of a State that would be controlling in an action upon the same claim in a State court"). It is unnecessary to delve into this subject (or to discuss the later formulations of the *Erie* rule, *See, e.g., Hanna v. Plumer*, 380 U.S. 460 (1965), or the probable inapplicability of *Erie* to the Federal Rules of Evidence, *see* 19 Wright et al., *Federal Practice and Procedure* § 4512, p. 414 (2d ed. 1996)), because plaintiffs never raised the issue in this court. If plaintiffs believed that their substantive rights were impaired by application of *Daubert* to their case, they should have said so during the litigation of their case. They cannot remain silent in federal court and then use the issue as the basis for relitigating in state court.

In sum, defendant has shown its entitlement to permanent injunctive relief. The order awarding such relief

will apply only to plaintiffs' suit against Thomas Hass (or any suits plaintiffs might try to bring in the future against defendant or any of its privies). Plaintiffs remain free to pursue their claims against Cedar Corporation.

ORDER

IT IS ORDERED that the motion of defendant AgriBank, FCB, for a permanent injunction is GRANTED; the Circuit Court for Portage County, Wisconsin, is enjoined from conducting any further proceedings brought against defendant AgriBank, FCB, or any of its privies by plaintiffs Mark A. Ramsden, Raelynn Ramsden individually and Milton R. Ramsden, individually and d/b/a as Ramsden Dairy, arising out of the transaction that gave rise to this case. FURTHER, IT IS ORDERED that plaintiffs Mark A Ramsden, Raelynn Ramsden, husband and wife, individually and d/b/a Ramsden Dairy and Milton R. Ramsden, individually and d/b/a as Ramsden Dairy, are enjoined from prosecuting or initiating any additional proceedings against defendant AgriBank, FCB, or any of its present or former officials, directors, employees or agents on claims arising out of the transaction that gave rise to this case.

Entered this 8th day of September, 1999.

BY THE COURT:

/s/ Barbara B. Crabb
BARBARA B. CRABB
District Judge

APPENDIX B

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 99-3617

Mark A. Ramsden, Raelynn Ramsden,
and Milton R. Ramsden, individually
and d/b/a Ramsden Dairy,
Plaintiffs-Appellants,

v.

AgriBank, FCB,
Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Wisconsin.
No. 98 C 221--Barbara B. Crabb, Judge.

Argued February 23, 2000--Decided June 2, 2000

Before Flaum, Kanne, and Diane P. Wood, Circuit Judges.

Flaum, Circuit Judge. The appellants--Mark A. Ramsden, Raelynn Ramsden, and Milton R. Ramsden, individually and d/b/a Ramsden Dairy (collectively "the Ramsdens") — challenge a decision by the district court to enjoin a state court proceeding which the appellee, AgriBank, alleged was threatening its prior, favorable federal court judgment. For the reasons stated herein, we hold that the district court abused its discretion in enjoining the state court proceedings, and we therefore reverse.

Background

The Ramsdens originally brought an action in the

Circuit Court for Portage County, Wisconsin, against Credit Services of North Central Wisconsin ACA, AgriBank, and Thomas E. Hass, AgriBank's employee, alleging tortious conduct in the sale of certain agricultural property. The state court dismissed the action against Hass, whereupon the Ramsdens dismissed the complaint without prejudice against the remaining defendants and appealed Hass's dismissal to the state court of appeals.

While the appeal was pending, the Ramsdens filed a second action against AgriBank in the Circuit Court for St. Croix County, Wisconsin, alleging misrepresentation and other tortious acts in the sale of the property. AgriBank removed the case to the United States District Court for the Western District of Wisconsin.

In federal court, the Ramsdens amended their complaint, alleging that they and their cattle were poisoned by benzene contamination in the water on the farm that AgriBank had sold them. Following extensive discovery, AgriBank moved for summary judgment, arguing that the Ramsdens lacked evidence sufficient to show that any benzene contamination caused the alleged health injuries. The court, applying *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993), to the Ramsdens' proposed expert testimony, concluded that the testimony lacked scientific reliability and validity and was therefore inadmissible. Accordingly, the court granted defendant AgriBank's motion for summary judgment. The Ramsdens appealed the judgment to this Court, but they dismissed the appeal voluntarily in exchange for a waiver by AgriBank of recovery of its costs.

While the Ramsdens' appeal was pending, however, the Wisconsin Court of Appeals reversed the trial court's

dismissal of Hass from the state court action and remanded the case to the trial court, where it was pursued by the Ramsdens. According to AgriBank, all of the Ramsden's allegations against Hass in that state court suit concern actions taken by Hass in the scope of his employment with AgriBank, and all of the allegations were the subject of the federal court suit against AgriBank. In March 1999, Hass moved for summary judgment in the state court, arguing claim and issue preclusion based on the summary judgment granted to AgriBank in federal district court. The state court denied the motion, finding that, although the elements were present for claim preclusion, considerations of equity and fairness barred application of claim preclusion to the state court action. The court found that under Wisconsin evidentiary law, which is less stringent than the federal *Daubert* requirements, the Ramsdens' expert would have been allowed to testify. Because of the significant differences in evidentiary rules, because defendant AgriBank had removed the case to federal court, and because the court could not find that the Ramsdens were engaged in vexatious litigation, the state court concluded that it would be unfair to bar the Ramsdens' claim. The state court reached similar conclusions with respect to issue preclusion.

At that point, counsel for AgriBank (the same counsel that represented Hass in the state action) went back to federal court to seek an injunction against the state court permanently enjoining it from further addressing any issues between the Ramsdens and Hass or AgriBank arising from the purchase of the farm property. AgriBank also sought an injunction against the Ramsdens to prohibit them from bringing any further actions against AgriBank or its employees arising from the purchase. The district court granted the injunctions, and the

Ramsdens now appeal.

Discussion

The Anti-Injunction Act generally prohibits federal courts from enjoining state court proceedings. 28 U.S.C. sec. 2283. The Act is designed to prevent friction between state and federal courts and to protect state court proceedings from federal interference. *See Amalgamated Clothing Workers of America v. Richman Bros.*, 348 U.S. 511, 514-16 (1955); *see also Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623, 630 (1977) (plurality opinion) ("The Act's purpose is to forestall the inevitable friction between the state and federal courts that ensues from the injunction of state judicial proceedings by a federal court.").

By its own terms, the Anti-Injunction Act's prohibition is sweeping and provides for only three types of exceptions: "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. sec. 2283. These exceptions are narrow ones. *See Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 146 (1988); *Atlantic Coast Line R.R. Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 287 (1970).

This case involves the third exception — the "relitigation exception" — which allows a party with a favorable federal judgment to protect that judgment by enjoining repetitive state court proceedings instead of relying on a claim or issue preclusion defense. *See Samuel C. Ennis & Co. v. Woodmar Realty Co.*, 542 F.2d 45, 49 (7th Cir. 1976); 17 Moore's Federal Practice, 121.08[1].

"[A]llowing an unsuccessful litigant to harass other participants in the federal case [through relitigation in state court] flouts and may be said to 'seriously impair the federal court's . . . authority to decide that case.'" *Samuel C. Ennis & Co.*, 542 F.2d at 50 (quoting *Atlantic Coast Line R.R. Co.*, 398 U.S. at 295). Therefore, under certain circumstances a federal court may enjoin state proceedings that attempt to readjudicate previously-decided matters. *Kutledge v. Scott Chotin, Inc.*, 972 F.2d 820, 825 (7th Cir. 1992).

In this case, the district court concluded that the Act permitted the issuance of an injunction if AgriBank could prove that it had established all the elements of claim or issue preclusion. *See Harper Plastics, Inc. v. Amoco Chemicals Corp.*, 657 F.2d 939, 946-47 (7th Cir. 1981) (holding that the relitigation exception to the Anti-Injunction Act permits federal courts to enjoin state court relitigation of matters finally adjudicated in federal court). After finding that the elements of claim preclusion were satisfied, the court enjoined the Ramsden's state court proceedings against Hass.

Because the relitigation exception bears on the delicate relationship between state and federal courts, strict timing requirements cabin its invocation. In *Parsons Steel, Inc. v. First Alabama Bank*, 474 U.S. 518, 524-25 (1986), the Supreme Court held that once a litigant raises a claim preclusion defense and the state court rules on it, that state court determination binds the federal courts. It reached this conclusion after noting that the Full Faith and Credit Act, 28 U.S.C. sec. 1738, under which a federal court must give the same preclusive effect to a state court judgment that another court of that state would give, embodies Congress' legislative commitment to federalism and comity in the area of

judgment recognition. 474 U.S. at 535; *see also Kremer v. Chemical Construction Corp.*, 456 U.S. 461, 481-82 (1982) ("It has long been established that sec. 1738 does not allow federal courts to employ their own rules of *res judicata* in determining the effect of state judgments. Rather, it goes beyond the common law and commands a federal court to accept the rules chosen by the State from which the judgment is taken."). The *Parsons Steel* Court went on to hold that "the Anti-Injunction Act and the Full Faith and Credit Act can be construed consistently, simply by limiting the relitigation exception of the Anti-Injunction Act to those situations in which the state court has not yet ruled on the merits of the *res judicata* issue." 474 U.S. at 524. It further explained that "the Full Faith and Credit Act requires that federal courts give the state-court judgment, and particularly the state court's resolution of the *res judicata* issue, the same preclusive effect it would have had in another court of the same State." *Id.* at 525. In other words, a federal court considering enjoining a state court proceeding, where the state court has ruled on the *res judicata* issue, must first, as a threshold matter, look to that state's law of judgments to determine whether another court of that state would view the res judicata ruling as final and binding. If so, then the federal court is bound by that ruling as well.

In this case, we agree with the district court that under Wisconsin law the state court's denial of summary judgment on the *res judicata* issue would not be regarded as sufficiently "final" to warrant preclusive effect in another Wisconsin court, and it would therefore not warrant the full preclusive effect in federal court demanded by the Full Faith and Credit Act. *See* Wis. Stat. sec. 808.03(1) ("A final judgment or final order is a judgment, order or disposition that disposes the entire matter in

litigation as to one or more of the parties . . . ."); *Heaton v. Larsen*, 294 N.W.2d 15, 24 (Wis. 1980). Accordingly, the district court was not statutorily barred by the Full Faith and Credit Act — as it intersects with the Anti-Injunction Act — from calling into question the state court's resolution of the *res judicata* issue.

But just because a federal court has the statutory power to enjoin a state court proceeding does not mean that it should exercise that authority. In other words, that the state court has not reached final judgment on a previously litigated claim is an essential but not necessarily sufficient condition of federal court intervention pursuant to the relitigation exception of the Anti-Injunction Act.

When a federal court is asked to enjoin state court proceedings, the mere fact that the case falls within one of sec. 2283's exceptions does not "qualify in any way the principles of equity, comity, and federalism that must restrain a federal court when asked to enjoin a state court proceeding." *Mitchum v. Foster*, 407 U.S. 225, 243 (1972). A litigant must still show equitable entitlement to an injunction. *See Kerr-McGee Chemical Corp. v. Hartigan*, 816 F.2d 1177, 1182 (7th Cir. 1987). Moreover, the Supreme Court has instructed that "[a]ny doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed in an orderly fashion to finally determine the controversy. The explicit wording of sec. 2283 itself implies as much, and the fundamental principle of a dual system of courts leads inevitably to that conclusion." *Atlantic Coast Line R.R. Co.*, 398 U.S. at 297. Assuming that the threshold test of finality mandated by *Parsons Steel* is satisfied, how far do these principles extend in limiting federal courts'

power to intervene once a state court has already adjudicated the merits of the preclusion issue?

Different jurisdictions have adopted competing approaches for cases in which the state court has not yet reached final judgment, but in which the state court has ruled on the *res judicata* defense. On remand from the Supreme Court and flowing back up from the district court, the Eleventh Circuit considered in the *Parsons Steel* case whether the Alabama state court's denial of a motion for summary judgment on *res judicata* grounds bound the federal court considering an injunction. *First Alabama Bank of Montgomery v. Parsons Steel, Inc.*, 825 F.2d 1475 (11th Cir. 1987). The Eleventh Circuit held that, under Alabama law, the denial of summary judgment was not a final adjudication of the preclusion issue, and it went on to hold, therefore, that the district court was not precluded from enjoining the state court proceedings. *Id.* at 1480-86; *see also Battle v. Liberty Nat'l Life Ins. Co.*, 877 F.2d 877, 882 (11th Cir. 1989) ("Because [a denial of a motion for summary judgment] is not a final order, it would not be given preclusive effect in state court and need not be accorded that deference in federal court.").

In *Amalgamated Sugar Co. v. NL Industries, Inc.*, 825 F.2d 634 (2d Cir. 1987), the Second Circuit held that a district court properly enjoined state court relitigation of a claim by shareholders where a federal court previously entered a judgment in favor of a corporation. In that case, the state court had not yet ruled on the merits of the *res judicata* defense raised by the corporation, but indicated that it would consider those merits only in the context of a full trial on the underlying claim. The Second Circuit held that the district court could properly enjoin the state court proceedings because the state

court had not entered a prior final judgment on the merits, but had merely denied the corporation's summary judgment motion without prejudice. *Id.* at 642. Under those circumstances, the Second Circuit did not need to confront the scenario before us, where the state court had not reached final judgment but had clearly adjudicated and expressly rejected the merits of the *res judicata* defense. The Second Circuit did, however, go on to note in dicta that "[the corporation] acted properly in moving for summary judgment on *res judicata* grounds in the New Jersey court prior to seeking injunctive relief in the district court, thereby attempting to avoid invoking the more intrusive remedy of injunctive relief." *Id.*

In *Kaempfer v. Brown*, 684 F.Supp. 319 (D.D.C. 1988), the District of Columbia District Court enjoined the defendants from pursuing a claim in District of Columbia courts where a federal district court's earlier judgment involved identical tort claims. At that time, the District of Columbia Superior Court had summarily denied the injunctive plaintiff's motion to dismiss on *res judicata* and other grounds, but the district court "[could not] say with the slightest degree of confidence that the Superior Court [had] decided the issue of *res judicata*." *Id.* at 323. The district court interpreted *Parsons Steel* as holding that the Full Faith and Credit Act bars a federal court from enjoining a state action in order to protect a prior federal judgment once a state court has expressly rejected a preclusion defense. *Id.*

We believe that a rule that restricts a federal court's discretion to enjoin state court proceedings once the state court expressly and unambiguously decides a *res judicata* defense, whether or not there has been a final judgment on the entire claim in state court, best reconciles the conflicting concerns identified in *Parsons Steel*.

Any federal injunction to bar purported relitigation balances efficiency advantages of finality against respect for state courts and their decisions. Once a state court considers a *res judicata* defense and rules that a prior federal judgment does not actually bar a claim, the affront of federal court intervention stripping the state court of power to continue is greatly magnified. After such a ruling, the interests in preventing possible relitigation are therefore generally outweighed by the heightened comity concerns except in the most extraordinary circumstances.[1]

The standards governing abstention under the *Younger* doctrine are instructive in this regard, as those standards have evolved in light of heightened comity concerns surrounding federal injunctions of state criminal proceedings and other state proceedings involving

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[1] An express and unambiguous rejection of a *res judicata* defense would arguably increase the likelihood that further state court proceedings would undermine a prior federal court judgment, and therefore counsel in favor of a federal injunction. However, this concern will almost always be outweighed by the heightened comity interests that arise once the state court has adjudicated this issue and, as explained later in this opinion, is best addressed through state appellate channels.

Drawing a line at the point at which a state court decides the *res judicata* issue might also arguably create incentives for litigants with a prior, favorable federal court judgment to rush back to federal court for an injunction rather than relying on the *res judicata* defense in state court at all. Aside from the fact that *Parsons Steel* already creates incentives to obtain a federal injunction before the state court reaches final judgment, we believe that it is necessary to restrict district court discretion in this way to prevent the relitigation exception of the Anti-Injunction Act from simply being turned into a vehicle for seeking appellate review of a state court decision in federal court. *See Atlantic Coast Line R.R. Co.*, 398 U.S. at 293.

important state interests. In *Younger v. Harris,* 401 U.S. 37 (1971), a plaintiff sought a federal injunction against a state criminal prosecution on the grounds that the prosecution violated federal constitutional rights. The district court ordered injunctive relief and the Supreme Court reversed, concluding that the injunction was "a violation of the national policy forbidding federal courts to stay or enjoin pending state court proceedings except under special circumstances." *Id.* at 41. "[The] underlying reason," the Court explained, "for restraining courts of equity from interfering with criminal prosecutions is reinforced by an even more vital consideration, the notion of 'comity,' that is, a proper respect for state functions . . . ." *Id.* at 44; *see also Trust & Investment Advisers, Inc. v. Hogsett,* 43 F.3d 290, 294-95 (7th Cir. 1994) (explaining that the *Younger* doctrine "has since been expanded beyond criminal prosecutions to various civil proceedings in state court implicating important state interests"). To accommodate this interest, the Court held that a litigant in the *Younger* context must make a "showing of bad faith, harassment, or . . . other unusual circumstance that would call for equitable relief." *Id.* at 54.[2]

In this case, the district court gave inadequate weight to these heightened comity concerns. Unhappy with the state court's handling of the *res judicata* defense, AgriBank went to federal court for another look at the issue. Having determined that *res judicata* should have barred the state court suit, the district court found no comity considerations that weighed against AgriBank's

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[2] In considering the types of "unusual circumstances" that satisfy this standard, the Court also noted that "even irreparable injury is insufficient unless it is 'both great and immediate.'" *Id.* at 46 (citing *Fenner v. Boykin*, 271 U.S. 240, 243 (1926)).

costs and inconvenience of continued state court proceedings. Instead, the district court concluded that the balance of harms and the public's interest in finality weighed in AgriBank's favor after noting only that "[t]he obvious prospect of relitigation suffices to show that defendant will suffer irreparable harm if an injunction does not issue to stop the state court proceeding." The court therefore enjoined further proceedings in state court on the matter, and we regard this as an abuse of discretion. Just as the *Younger* Court rejected the plaintiff's plea for injunctive relief because the injury he faced was "solely 'that incidental to every criminal proceeding brought lawfully and in good faith,'" 401 U.S. at 49 (citations omitted), here AgriBank sought injunctive relief in the face of further litigation expenses which, though costly, are incidental to defense of every lawsuit. While the expenses and uncertainty of litigation may sometimes be sufficient to warrant an injunction pursuant to sec. 2283 prior to a clear and express state court ruling on the preclusion defense, *see, e.g., Harper Plastics, Inc. v. Amoco Chemicals Corp.*, 657 F.2d 939 (7th Cir. 1981), they are insufficient when weighed against the added, countervailing comity interests that arise after that point.

Under this approach, AgriBank was not stripped of a remedy if it believed that the state court wrongly decided the *res judicata* issue. If AgriBank had demonstrated extraordinary circumstances it might have been entitled to a federal injunction. As it stands, though, AgriBank would still have an opportunity to appeal the

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[3] Although a denial of a motion for summary judgment is not appealable as a final decision, under Wisconsin law a litigant may petition for leave to appeal a non-final order under certain circumstances. *See* Wis. Stat. sec. 808.03(2).

state trial court's decision up through the state appeals process.[3] As the Supreme Court went on to explain in *Parsons Steel:*

> Even if the state court mistakenly rejected respondents' claim of *res judicata*, this does not justify the highly intrusive remedy of a federal court injunction against the enforcement of the state-court judgment. . . . Challenges to the correctness of a state court's determination as to the conclusive effect of a federal judgment must be pursued by way of appeal through the state-court system and certiorari from this Court.

474 U.S. at 525; *see also Amalgamated Clothing Workers v. Richman Bros.*, 348 U.S. 511, 518 (1955) ("The prohibition of sec. 2283 is but continuing evidence of confidence in the state courts, reinforced by a desire to avoid direct conflicts between state and federal courts."). While a federal injunction of state court proceedings might, in some cases, be cost- effective, "inefficient simultaneous litigation in state and federal courts on the same issue" is "one of the costs of our dual court system." *Id.* at 524-25.

Conclusion

For the reasons stated herein, we VACATE the decision of the district court granting the injunction and REMAND the case for further proceedings consistent with this opinion.

APPENDIX C

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT
(formerly known as Certificate of Interest)

Appellate Court No: 99-3617

Short Caption: Ramsden v. AgriBank, FCB

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement stating the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1. Each attorney is asked to complete and file a Disclosure Statement with the Clerk of the Court as soon as possible after the appeal is docketed in this Court. Counsel is required to complete the entire statement and to use N/A for any information that is not applicable.

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

AgriBank, FCB

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Axley Brynelson, LLP

~~Peterson, Wieting, Calewarts, Duffy & Maxwell~~

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

None

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

None

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed with the principal brief or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. The attorney furnishing the statement must file an amended statement to reflect any material changes in the required information. The text of the statement (i.e. caption omitted) shall also be included in front of the table of contents of the party's main brief.

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Fine-Tuning Judicial Federalism: A Proposal for Reform of the Anti-Injunction Act, 1990 B.Y.U.L. Rev. 289

To the Honorable Judges of the United States Court of Appeals for the Seventh Circuit:

AgriBank, FCB ("AgriBank"), pursuant to 28 U.S.C. § 46 and Federal Rules of Appellate Procedure 35 and 40, petitions for a panel rehearing and a rehearing en banc in the above-captioned matter of the panel decision rendered June 2, 2000, in this matter, as the proceeding involves a question of exceptional importance regarding the interpretation of 28 U.S.C. § 2283 (the "Anti Injunction Act") when applied to protect or effectuate a federal court judgment by staying a state court action. The panel decision (1) creates a new standard that is in conflict with the decisions of two Court of Appeals that have directly addressed the identical issue, namely, the Eleventh Circuit in *First Alabama Bank v. Parsons Steel, Inc.*, 825 F.2d 1475 (11th Cir. 1987), cert. denied, 484 U.S. 1060,98 L. Ed.2d 980, 108 S. Ct. 1015 (1988) (hereafter "Parsons II"), which applied the rule established by the U.S. Supreme Court in that same case at 474 U.S. 518, 88 L.Ed.2d 877, 106 S. Ct. 768 (1986), and *Battle v. Liberty Nat. Life Ins. Co.*, 877 F.2d 877 (11th Cir. 1989), as well as the Second Circuit's ruling in *Amalgamated Sugar Co. v. NL Industries, Inc.*, 825 F.2d 634 (2d Cir. 1987); (2) changes the present definition of irreparable harm for purposes of the relitigation exception in conflict with numerous rulings, including *In Re SDDS, Inc.*, 97 F.3d 1030 (8th Cir. 1996); and (3) conflicts with the U.S. Supreme Court decision in *Parsons Steel, Inc. v. First Alabama Bank of Montgomery*, 474 U.S. 518, 88 L. Ed. 2d 877, 106 S. Ct. 768 (1986), which held that the district court was in the best position to decide the propriety of a federal court injunction under general principles of equity, comity and federalism.

The request for a panel rehearing is limited to consideration as to whether it is inequitable to apply retroactively the newly adopted standard for granting an injunction when the litigants and district court have clearly relied upon and carefully followed existing precedent.

I. STATEMENT OF THE CASE AND COURSE OF PROCEEDINGS.

Mark A. Ramsden, Raelynn Ramsden and Milton R. Ramsden ("Ramsdens") have commenced multiple lawsuits against AgriBank and its employee, Thomas Hass ("Hass"). The initial action was brought in Portage County Circuit Court against Farm Credit Services of North Central Wisconsin ACA ("FCS"), AgriBank and Hass. (Ramsden Complaint, Appellee's App., pp. 9-26). The Portage County Circuit Court dismissed the action as to Hass. (Portage County Decision, Appellee's App., pp. 80-81). The Ramsdens appealed the dismissal of the claims against Hass to the Wisconsin Court of Appeals. (August 5, 1999 Aff. of Patricia M. Gibeault, Appellee's App., p. 2, ¶ 9). Ramsdens' Complaint in the Portage County Circuit Court was dismissed as to FCS and AgriBank without prejudice. (Id. ¶ 10). After the dismissal of the Portage County Circuit Court action as to AgriBank and while the appeal of the dismissal of Hass was pending, the Ramsdens brought a second action, solely against AgriBank in St. Croix County Circuit Court. (St. Croix County Circuit Court Complaint, Gibeault Aff., Appellee's App., pp. 27-31). The St. Croix County action included the same misrepresentation claims that were included in the Portage County Circuit Court action. AgriBank removed the St. Croix County action to the U.S. District Court for the Western District of Wisconsin. (Notice of Removal, R. 2). On December 23, 1998, six weeks prior to the scheduled trial in the federal court, the

Wisconsin Court of Appeals issued its decision reversing the Portage County Circuit Court's dismissal of Hass, finding he was a proper party to the original Portage County Circuit Court action. (Wisconsin Court of Appeals decision, Appellee's App., pp. 47-60). *Ramsden v. Farm Credit Services*, 223 Wis. 2d 704, 590 N.W.2d 1 (Ct. App. 1998).[1] Ramsdens made no attempt to add Hass to the pending federal action or for that action to be returned to state court. (Gibeault Aff., Appellee's App., p. 5, ¶ 27).

One week prior to trial, the district court granted AgriBank's motion for summary judgment dismissing the Ramsdens' claims in their entirety with prejudice and on the merits. (Gibeault Aff., Appellee's App., p. 4, ¶¶ 19, 20, 32; Opinion and Order, Appellee's App., pp. 143-57).

AgriBank spent more than $400,000 in defending that action and continues to be forced to spend significant sums in defending its employee regarding the identical claims which the district court has determined were without merit. (Gibeault Aff., Appellee's App., p. 6, ¶ 30).

Hass moved the Portage County Circuit Court for summary judgment on grounds of claim and issue preclusion. (Gibeault Aff., Appellee's App., p. 7, ¶ 38). The Portage County Circuit Court denied Hass' motion, finding that all elements of claim preclusion were satisfied but concluding that Ramsdens' claims were not barred by preclusion principles because the federal court action "*did not provide an adequate opportunity for a full and*

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[1] The panel decision erroneously states that the Wisconsin Court of Appeals decision was issued after the district court had ruled on the merits and while that ruling was on appeal to the Seventh Circuit.

fair adjudication of the underlying issue in this case." (Portage County Circuit Court Decision, Appellee's App., pp. 62-77) (emphasis in original).

AgriBank filed with the federal court its motion for injunctive relief to protect the district court's February 9, 1999 judgment. (Gibeault Aff., Appellee's App., p. 8, ¶ 43). The district court granted AgriBank's Motion for Permanent Injunctive Relief and enjoined the Portage County Circuit Court from conducting any further proceedings brought against AgriBank or any of its privies, including its officers, employees or agents by the Ramsdens on the claims arising out of the transaction that gave rise to the federal court action. (September 8, 1999, Opinion and Order, R. 193).

II. ARGUMENT AND AUTHORITIES.

A. Under Existing Statutes and Precedent, an Injunction May Be Granted Within the Discretion of the District Court to Prevent Relitigation Provided the State Court Has Not Issued a Final Order Relating to Claim Preclusion.

Section 2283 of Title 28 expressly authorizes a federal court to issue injunctions to stay state court proceedings in order to protect or effectuate its judgments based upon res judicata and collateral estoppel. *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 147, 100 L. Ed.2d 127, 108 S. Ct. 1684 (1988). The standard to be applied on appeal of the district court's entry of an injunction under 28 U.S.C. § 2283 is an abuse of discretion. *City Investing Co. v. Simcox*, 633 F.2d 56, 64, n. 18 (7th Cir. 1980). The panel decision reverses the district court's decision by requiring a showing of more than the harm that comes with the costs, uncertainty and possible adverse decision that

comes from relitigation, the very issues the relitigation exception exists to prevent. The panel decision, without any law to support its position, but based upon comity concerns, draws a distinction as to what constitutes irreparable harm based upon whether the state court has been asked to recognize the preclusive effect of the existing federal judgment.

The panel decision fails to recognize that comity is a two-way street.

In *Southwest Airlines Co. v. Texas Intern. Airlines*, 546 F.2d 84, 91 (5th Cir. 1997), the court stated:

> . . . the purpose of section 2283 is to "avoid unseemly conflict between the state and federal courts." Congress has decided that frequent injunctions against state proceedings by the federal judiciary would not engender the harmonious relations necessary to the functioning of our federal system.
>
> Whether an "unseemly conflict" disturbs the harmony of the system, however, turns on the facts of each case. Here, we conclude that the preliminary injunction, rather than damaging federal-state relations, would begin to restore the harmony interrupted by the filing of *Austin*. First, Congress has specifically excepted from the ban of section 2283 all injunctions "to protect or effectuate . . . judgments" of the federal judiciary. This unqualified exception recognizes that the states, as well as the federal government, have a responsibility to maintain the harmony we cherish. As we first said in *Jacksonville Blow Pipe v. Reconstruction Finance Corp.*, 5 Cir. 1957, 244 F.2d 394, 400:

> [N]othing would be as productive of friction between the state and federal courts as to permit a state court to interpret and perhaps to upset such a judgment of a federal court.

Friction is also avoided by an injunction that:

> prevents multiple litigation of the same cause of action and ... assures the winner in a federal court that he will not be deprived of the fruits of his victory by a later contrary state judgment which the Supreme Court may or may not decide to review.

In conflict with both the Eleventh and Second Circuit Court of Appeals decisions that implement the U.S. Supreme Court's decision in *Parsons Steel, supra*, the panel has adopted a standard requiring virtually complete deference and comity to a state court's non-final order, despite the tremendous resources expended and extensive investment made by the federal district court and the parties in previously resolving the same case by determining it was without merit. Under the panel's ruling and contrary to the purposes for the relitigation exception to the Anti-Injunction Act, that decision is now allowed to be attacked, although the required elements for res judicata have unquestionably been met.

1. *Parsons II* requires affirming the district court's injunction.

The facts and procedure followed in *Parsons II* are strikingly similar to those in the present case, except in *Parsons II* the defense actually had jury trials on the same claims both in the federal court and in the state court, a heavy burden which the holder of a federal court judgment in its favor, such as AgriBank, should not be required to bear.

In *Parsons II*, like the case at bar, two actions were pending simultaneously, a state court action brought by Parsons against First Alabama and its officer; and a federal court action brought by Parsons against First Alabama and its officer. The federal action was the first to proceed to trial, resulting in a judgment in favor of First Alabama. First Alabama, like AgriBank in the case at bar, then raised res judicata as a defense in the pending state court action through motions to dismiss and motions for summary judgment which were denied by the state court. The case was tried by the state court, with the defendants moving for a directed verdict, which motion was denied. Defendant then sought an injunction in the federal district court to enjoin the further prosecution of the state court action on the basis of res judicata and collateral estoppel, which injunction was granted by the district court. Parsons appealed. The Eleventh Circuit Court of Appeals affirmed in part. The Supreme Court granted certiorari, reversed and remanded. Following remand from the Supreme Court, the district court continued the injunction protecting the defendant bank and its employee from further prosecution of the state court action, resulting in a second appeal of the issuance of the injunction to the Court of Appeals.

The Court of Appeals decision summarized the Supreme Court's ruling regarding the relitigation exception to the Anti-Injunction Act and the Full Faith and Credit Statute, as the Supreme Court found that:

> . . . the two provisions could be read consistently by "limiting the relitigation exception of the Anti-Injunction Act to those situations in which the state court has not yet ruled on the merits of the res judicata issue" and that "[o]nce the state court has finally rejected a claim of res judicata, then the Full

> Faith and Credit Act becomes applicable and federal courts must turn to state law to determine the preclusive effect of the state court's decision."
>
> . . . It further found that the district court was in the best position to determine and apply Alabama preclusion law in the first instance and, if the district court found that the state-court judgment was not entitled to preclusive effect under Alabama law and the Full Faith and Credit Act, "it would then be in the best position to decide the propriety of a federal-court injunction under the general principles of equity, comity, and federalism. . . ."

Parsons II at 1479. Applying the Supreme Court's analysis, the *Parsons Steel* Court of Appeals affirmed the district court's determination granting an injunction because (a) although the issue of res judicata had been raised several times in various ways in the state court, the state court decisions were not final decisions; and (b) under Alabama law, non-final decisions are not entitled to preclusive effect for purposes of res judicata and collateral estoppel; and (c) the party seeking the injunction made the required strong and unequivocal showing of relitigation; and (d) the principles of *Younger v. Harris*, 401 U.S. 37, 27 L. Ed.2d 669, 91 S. Ct. 746 (1971), are not applicable in a civil action unless "important state interests are involved".

The panel decision in the pending case is directly contrary to the Ninth Circuit's analysis and ruling in *Parsons II*. After the panel correctly found that the decision of the Wisconsin state court denying Hass' motion for summary judgment is a non-final order, the panel held (a) the existence of the non-final order changes the comity concerns raising the bar to entry of an injunc-

tion; (b) the principles of *Younger, supra*, are applicable in a civil action to raise the standards for the issuance of an injunction; and (c) irreparable harm for purposes of issuing an injunction requires more than the costs, inconvenience, uncertainty and possible nullification of the federal court's judgment if any enforcement of the federal judgment had been sought and denied by the state court.[2]

Parsons Steel sought review by the Supreme Court. If the Supreme Court believed its prior *Parsons Steel* decision was misinterpreted or that its decision in *Younger, supra*, affected the analysis regarding comity in a civil action where the state has no "important" interests, the Eleventh Circuit's erroneous interpretation and application of the law could have been corrected. However, the

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[2] Judge Wood, one of the panel in the instant case, in her Law Review Article, *Fine-Tuning Judicial Federalism: A Proposal for Reform of the Anti-Injunction Act*, 1990 B.Y.U.L. Rev. 289, recognized that the present status of the law allows for a district court to properly issue an injunction on the facts in the present case. "Once the state court has finally rejected a claim of res judicata, then the Full Faith and Credit Act becomes applicable and federal courts must turn to state law to determine the preclusive effect of the state court's decision. . . . *Finally, if the party presents its affirmative defense to the state court and the state court rejects it, then the federal court will be free to issue an injunction as long as the request is presented before the state court's judgment is sufficiently final for preclusion purpose under the state's own law of judgments*. . . . (emphasis added). In sum, the narrow holding of Parsons, that a final state court determination of the effect of a federal judgment must be judged under the Full Faith and Credit Statute, is unobjectionable standing alone. Nevertheless, if analysis under section 1738 indicates that the state court judgment seriously interferes with a prior federal court judgment, *it is hard to see why the federal court should lack power to take action as long as the Anti-Injunction Act reads as it does*. *Id*. at 305, 306 (emphasis added).

Supreme Court denied cert., leaving the Eleventh Circuit's analysis and decision implementing the Supreme Court's ruling in place.

2. The panel decision contradicts additional existing precedent.

In *Battle, supra*, the federal district court entered a final judgment based upon a settlement agreement. Thereafter, a state court action was filed. The state circuit court found the action barred by res judicata and collateral estoppel based upon the prior federal court judgment. The Alabama Supreme Court reversed and remanded for trial. The federal district court issued injunctions preventing pursuit of the action. The Court of Appeals affirmed, finding the state Supreme Court decision was not a final judgment under Alabama law. Unlike the panel decision, the court did not add a requirement of a higher showing than that required if the injunction request was brought before the state court had addressed the issue.

A similar procedural pattern existed in *Amalgamated, supra*. In *Amalgamated*, the federal district court entered a preliminary injunction preventing the defendant from implementing or utilizing a purchase plan pending final adjudication of the matter, holding that the plan violated New Jersey state law. The next day, a state court action was filed to relitigate the validity of the plan declared invalid in the federal action. Based upon a settlement agreement reached in the federal litigation, the district court granted a motion to convert its preliminary injunction into a final judgment. Thereafter, Amalgamated filed a motion for summary judgment in the state court action based on res judicata, which motion was denied. Leave to take an interlocutory appeal was

denied. Amalgamated then moved the district court for a permanent injunction under the relitigation exception in the Anti-Injunction Act, which motion was granted. The injunction order was appealed to the Second Circuit Court of Appeals. Relying on the Supreme Court's decision in *Parsons Steel*, the Court stated:

> After the district court adjudicated the merits of the purchase rights plan prior to granting the preliminary injunction, and entered a final consent judgment incorporating the terms of the parties' settlement agreement, it was not required to abstain on principles of comity from issuing the injunction against relitigation by Rothenberg in the state court. Where a state court has not ruled on the merits of the res judicata claim, the district court may enter an injunction pursuant to the relitigation exception in § 2283. *Parsons Steel v. First Alabama Bank*, 474 U.S. 518, 523-24, 106 S. Ct. 768, 772 (1986).....In short, because the New Jersey court had not entered a prior final judgment on the merits, but had merely denied the summary judgment motion without prejudice, the district court was not required to abstain from issuing the injunction.
>
> Amalgamated acted properly in moving for summary judgment on res judicata grounds in the New Jersey court prior to seeking injunction relief in the district court, thereby attempting to avoid invoking the more intrusive remedy of injunction relief.

Amalgamated at 641, 642. Contrary to the *Amalgamated* court supporting a first request to honor the federal court's judgment being made in the state court, the practical impact of the panel decision will have exactly the opposite effect intended (advancing comity and fed-

eralism) because litigants will, in all cases, go to federal courts seeking injunctive relief, resulting in potentially increased interference in state court proceedings. Under the present standard in *Parsons II*, in limited circumstances, interference with a state court proceeding by the federal court will occur.

III. THE PANEL DECISION INCORRECTLY UTILIZED THE ANALYSIS AND STANDARD IN *YOUNGER* TO CREATE THE NEW STANDARD.

Although the *Younger* decision predates the Supreme Court's *Parsons Steel* decision by 16 years, the Supreme Court did not include the *Younger* analysis or standard for irreparable harm in its *Parsons Steel* decision because it was not applicable. *Younger* did not involve the relitigation exception to the Anti-Injunction Act.

Younger is a court-created fourth exception to the Anti-Injunction Act based upon principles of federalism and comity. The Anti-Injunction Act includes three exceptions to the general rule that the federal courts may not grant an injunction to stay proceedings in a state court, one of which is the relitigation exception relied upon here. The *Younger* exception was succinctly explained in *In re McMullen*, 189 B.R. 402,404 (Bkrtcy. E.D. Mich. 1995):

> In addition to these statutory exceptions, there is also "a judicial exception" to the general rule that "state courts [are allowed] to try state cases from interference by federal courts." Id. This judicial exception is made "where a person about to be prosecuted in a state court can show that he will, if the proceeding in the state court is not enjoined, suffer irreparable damages."

The facts, law and analysis of *Younger* and its progeny are not applicable to the present case. It should not be used to change the requirements of the relitigation exception in order to reverse the district court's decision which correctly applied the existing law.

A. There Is No Precedent Supporting the Standard Adopted in the Panel Decision.

There is no requirement in *Parsons II, Battle*, or *Amalgamated* that the irreparable harm for an injunction under the relitigation exception is anything higher than the costs, uncertainty, lack of finality and possible nullification of the federal court's decision that occur by allowing relitigation. That is what is meant by protecting and effectuating the district court's judgment. In *Samuel C. Ennis & Co., Inc. v. Woodmar Realty Co.*, 542 F.2d 45 (7th Cir. 1976), the Seventh Circuit ruled that the district court erred in failing to issue an injunction staying the state court proceedings, reasoning that if the plaintiff were successful in its state court action, the bankruptcy court's order of distribution would be nullified. *Id.* at 48. The same potential result exists in the case at bar. Requiring a party to relitigate in state court identical claims by identical plaintiffs previously decided by a federal court constitutes irreparable harm. *In re SDDS, Inc., supra; Daewoo Electronics v. Western Auto Supply Co.*, 975 F.2d 474,478 (8th Cir. 1992). In the present case, if the Ramsdens are allowed to pursue their state court action and are successful, the district court's determination dismissing the identical claims will be nullified.

IV. IF THE STANDARDS FOR APPLICATION OF THE ANTI-INJUNCTION ACT ARE TO BE CHANGED, IT SHOULD BE BY LEGISLATION, THE SUPREME COURT, OR EN BANC DECISION.

Judge Wood strenuously argues in her law review article for changes in the Anti-Injunction Act by rewriting the Act. 1990 B.Y.U.L. Rev. 319. The revisions to the Act which she supported have not occurred. The panel decision replaces legislation by rewriting the requirements under the Anti-Injunction Act and under the Supreme Court and Court of Appeals precedent. Prior to that becoming the ruling of the Seventh Circuit in conflict with existing law of other circuits, it is appropriate for an en banc rehearing on this important issue to ensure that a majority of the court agrees with the conflicting precedent it establishes.

In addition, AgriBank requests the panel to consider applying its new standard prospectively so that litigants and courts are not blind sided when relying on the uniform appellate holdings that preceded the panel decision. Much like the court opined in *Burns v. Rohr*, 346 F. Supp. 994 (S.D. Ca. 1972), and *Rosenfeld v. Southern Pacific Company*, 444 F.2d 1219, 1227 (9th Cir. 1971), AgriBank should not be denied the injunction it obtained when it followed the explicit provisions of the existing applicable law.

Dated this 15 day of June, 2000.

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APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

June 30, 2000

No. 99-3617

Hon. Joel M. Flaum, *Circuit Judge*

Hon. Michael S. Kanne, *Circuit Judge*

Hon. Diane P. Wood, *Circuit Judge*

MARK A. RAMSDEN, *et al.*
Plaintiffs-Appellants,
AGRIBANK, FCB,
Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Wisconsin.

No. 98 C 221

Barbara B. Crabb, *Judge.*

ORDER

On consideration of the petition for rehearing filed in the above-entitled case on June 16, 2000 by defendant-appellee, no judge has requested a vote thereon, and all of the judges on the original panel have voted to deny a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing be and same is hereby DENIED.